

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID LIDYARD and MAKENNA
LIDYARD,

Plaintiffs,

v.

USAA CASUALTY INSURANCE
COMPANY,

Defendant.

No. 2:21-cv-00396 BJR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, plaintiffs David and Makenna Lidyard and defendant USAA Casualty Insurance Company (“USAA CIC”) (collectively, “the parties”) hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable

1 legal principles, and does not presumptively entitle parties to file confidential information under
2 seal.

3 2. CONFIDENTIAL MATERIAL

4 “Confidential material” shall include the following documents and tangible things
5 produced or otherwise exchanged: (1) USAA CIC’s internal operating procedures and claims
6 handling guidelines, referred to as Knowledge Delivery Documents (“KDs”), whether written
7 or oral, (2) USAA CIC’s training records, manuals, policies or procedures, whether written or
8 oral, (3) USAA CIC’s underwriting policies, procedures, and processes, whether written or oral,
9 and (4) USAA CIC personnel files.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as
12 defined above), but also (1) any information copied or extracted from confidential material; (2)
13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
14 conversations, or presentations by the parties or their counsel that might reveal confidential
15 material.

16 However, the protections conferred by this agreement do not cover information that is
17 in the public domain or becomes part of the public domain through trial or otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is
20 disclosed or produced by another party or by a non-party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
22 disclosed only to the categories of persons and under the conditions described in this agreement.
23 Confidential material must be stored and maintained by a receiving party at a location and in a
24 secure manner that ensures that access is limited to the persons authorized under this agreement.
25

1 4.2 Disclosure of Confidential Materials. Unless otherwise ordered by the Court or
2 permitted in writing by the designating party, a receiving party may disclose any confidential
3 material only to:

4 (a) the receiving party's counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the information for this
6 litigation;

7 (b) the officers, directors, and employees (including in house counsel) of the
8 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
9 agree that a particular document or material produced is for Attorney's Eyes Only and is so
10 designated;

11 (c) experts and consultants to whom disclosure is reasonably necessary for
12 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
13 (Exhibit A);

14 (d) the Court, court personnel, court reporters, and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication
16 of confidential material, provided that counsel for the party retaining the copy or imaging
17 service instructs the service not to disclose any confidential material to third parties and to
18 immediately return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
21 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages
22 of transcribed deposition testimony or exhibits to depositions that reveal confidential material
23 must be separately bound by the court reporter and may not be disclosed to anyone except as
24 permitted under this agreement; and
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1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party
5 to determine whether the designating party will remove the confidential designation, whether
6 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
7 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the Court to file material
9 under seal.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this agreement must
13 take care to limit any such designation to specific material that qualifies under the appropriate
14 standards. The designating party must designate for protection only those parts of material,
15 documents, items, or oral or written communications that qualify, so that other portions of the
16 material, documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
20 unnecessarily encumber or delay the case development process or to impose unnecessary
21 expenses and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it designated
23 for protection do not qualify for protection, the designating party must promptly notify all other
24 parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 2 agreement, or as otherwise stipulated or ordered, disclosure of discovery material that qualifies
 3 for protection under this agreement must be clearly so designated before or when the material
 4 is disclosed or produced.

5 (a) Information in Documentary Form: Materials in “documentary form”
 6 include paper or electronic documents and deposition exhibits, and exclude transcripts of
 7 depositions or other pretrial or trial proceedings. The designating party must affix the word
 8 “CONFIDENTIAL” to each page that contains confidential material in a manner that will not
 9 interfere with the legibility of the document. If only a portion or portions of the material on a
 10 page qualifies for protection, the producing party also must clearly identify the protected
 11 portion(s) (e.g., by making appropriate markings in the margins).

12 (b) Testimony Given in Deposition or Other Pretrial Proceedings: The
 13 parties and any participating non-parties must identify on the record, during the deposition or
 14 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate
 15 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
 16 after receiving the transcript of the deposition or other pretrial proceeding, designate portions
 17 of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
 18 confidential information at trial, the issue should be addressed during the pre-trial conference.

19 (c) Other Tangible Items: The producing party must affix in a prominent
 20 place on the exterior of the container or containers in which the information or item is stored
 21 the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
 22 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 24 designate qualified confidential information or materials does not, standing alone, waive the
 25

1 designating party's right to secure protection under this agreement for such material. Upon
2 timely correction of a designation, the receiving party must make reasonable efforts to ensure
3 that the material is treated in accordance with the provisions of this agreement.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
12 regarding confidential designations without court involvement. Any motion regarding
13 confidential designations or for a protective order must include a certification, in the motion or
14 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute without court action.
16 The certification must list the date, manner, and participants to the conference. A good faith
17 effort to confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
21 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
22 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
23 burdens on other parties) may expose the challenging party to sanctions. All parties shall
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1 continue to maintain the material in question as confidential until the Court rules on the
2 challenge.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as
7 “CONFIDENTIAL,” that party must:

8 (a) promptly notify the designating party in writing and include a copy of
9 the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the designating party whose confidential material may be affected.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
17 confidential material to any person or in any circumstance not authorized under this agreement,
18 the receiving party must immediately (a) notify in writing the designating party of the
19 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 protected material, (c) inform the person or persons to whom unauthorized disclosures were
21 made of all the terms of this agreement, and (d) request that such person or persons execute the
22 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently

produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 9, 2021

s/ Jonathan Nolley (via email authorization)

Jonathan Nolley, WSBA No. 35850

Attorneys for Plaintiffs

DATED: November 9, 2021

s/ Blake Marks-Dias

Blake Marks-Dias, WSBA No. 28169

Attorneys for Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED this 12th day of November, 2021.

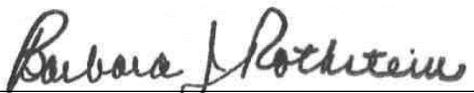
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9 BARBARA J. ROTHSTEIN
10 UNITED STATES DISTRICT JUDGE
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Western District of Washington on [date]
 in the case of *Lidyard v. USAA Casualty Insurance Company*, Case No. 2:21-cv-00396 BJR. I
 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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